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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/611,405	07/01/2003	Peter M. Wild	3048.1003-002	1924
7590	08/27/2004		EXAMINER	
William Nitkin 850 Boylston Street Chestnut Hill, MA 02467			GELLNER, JEFFREY L	
			ART UNIT	PAPER NUMBER
			3643	

DATE MAILED: 08/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/611,405	WILD ET AL. <i>S</i>	
	Examiner Jeffrey L. Gellner	<b>Art Unit</b> 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 1 July 03; 8 Jan. 04.
- 2a) This action is **FINAL**.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) \_\_\_\_\_ is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) 1-42 are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

Restriction to one of the following inventions is required under 35 U.S.C. 121:

- I. Claims 13-16, drawn to a method for injecting fluid into a plant , classified in class 47, subclass 57.5.
- II. Claims 1-12, drawn to a fluid injection system with metering device, classified in class 47, subclass 57. 57.5
- III. Claims 17-19, drawn to a plug, classified in class 47, subclass 57.5.
- IV. Claims 20-23, drawn to a system with plug for injecting a fluid into a plant, classified in class 47, subclass 57.5.
- V. Claims 24-25, drawn to a pressure gauge, classified in class 47, subclass 57.5.
- VI. Claim 26, drawn to an apparatus for injecting a fluid with pressure gauge, classified in class 47, subclass 57.5.
- VII. Claims 27-33, drawn to an apparatus (hand- or battery-operated) for injecting fluid, classified in class 47, subclass 57.5.
- VIII. Claims 34-42, an apparatus for injecting fluid with a pressure valve, classified in class 47, subclass 57.5.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II-VIII are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used

to practice another and materially different process. (MPEP § 806.05(e)). In this case the process could be achieved by using a cylinder, charge with fluid, and an explosive.

Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II-VIII, restriction for examination purposes as indicated is proper.

Inventions II and III are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention III has separate utility such as sealing a soda bottle. See MPEP § 806.05(d).

Because these inventions are distinct for the reasons given above and the search required for Group II is not required for Group III, restriction for examination purposes as indicated is proper.

Inventions II and IV are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention IV has separate utility such as filling and sealing a soda bottle. See MPEP § 806.05(d).

Because these inventions are distinct for the reasons given above and the search required for Group II is not required for Group IV, restriction for examination purposes as indicated is proper.

Inventions II and V are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be

separately usable. In the instant case, invention V has separate utility such as determining the pressure in a tire or balloon. See MPEP § 806.05(d).

Because these inventions are distinct for the reasons given above and the search required for Group II is not required for Group V, restriction for examination purposes as indicated is proper.

Inventions II and VI are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention VI has separate utility such as filling and sealing a soda bottle. See MPEP § 806.05(d).

Because these inventions are distinct for the reasons given above and the search required for Group II is not required for Group VI, restriction for examination purposes as indicated is proper.

Inventions II and VII are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention VII has separate utility such as filling and sealing a soda bottle. See MPEP § 806.05(d).

Because these inventions are distinct for the reasons given above and the search required for Group II is not required for Group VII, restriction for examination purposes as indicated is proper.

Inventions II and VIII are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be

separately usable. In the instant case, invention VIII has separate utility such as filling and sealing a soda bottle. See MPEP § 806.05(d).

Because these inventions are distinct for the reasons given above and the search required for Group II is not required for Group VIII, restriction for examination purposes as indicated is proper.

Inventions III and IV are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the subcombination includes a curved cross-section adjacent the reservoir. The subcombination has separate utility such as such as filling and sealing a soda bottle.

Because these inventions are distinct for the reasons given above and the search required for Group III is not required for Group IV, restriction for examination purposes as indicated is proper.

Inventions III and V are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention V has separate utility such as filling and sealing a soda bottle. See MPEP § 806.05(d).

Because these inventions are distinct for the reasons given above and the search required for Group III is not required for Group V, restriction for examination purposes as indicated is proper.

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Inventions III and VI are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention IV has separate utility such as filling and sealing a soda bottle. See MPEP § 806.05(d).

Because these inventions are distinct for the reasons given above and the search required for Group III is not required for Group VI, restriction for examination purposes as indicated is proper.

Inventions III and VII are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention VII has separate utility such as filling and sealing a soda bottle. See MPEP § 806.05(d).

Because these inventions are distinct for the reasons given above and the search required for Group III is not required for Group VII, restriction for examination purposes as indicated is proper.

Inventions III and VIII are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention VIII has separate utility such as filling and sealing a soda bottle. See MPEP § 806.05(d).

Because these inventions are distinct for the reasons given above and the search required for Group III is not required for Group VIII, restriction for examination purposes as indicated is proper.

Inventions IV and V are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention V has separate utility such as filling and sealing a soda bottle. See MPEP § 806.05(d).

Because these inventions are distinct for the reasons given above and the search required for Group IV is not required for Group V, restriction for examination purposes as indicated is proper.

Inventions IV and VI are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention VI has separate utility such as filling and sealing a soda bottle. See MPEP § 806.05(d).

Because these inventions are distinct for the reasons given above and the search required for Group IV is not required for Group VI, restriction for examination purposes as indicated is proper.

Inventions IV and VII are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention VII has separate utility such as filling and sealing a soda bottle. See MPEP § 806.05(d).

Because these inventions are distinct for the reasons given above and the search required for Group IV is not required for Group VII, restriction for examination purposes as indicated is proper.

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Inventions IV and VIII are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention VIII has separate utility such as filling and sealing a soda bottle. See MPEP § 806.05(d).

Because these inventions are distinct for the reasons given above and the search required for Group IV is not required for Group VIII, restriction for examination purposes as indicated is proper.

Inventions V and VI are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the subcombination includes measuring a falling injection pressure. The subcombination has separate utility such as filling and sealing a soda bottle.

Because these inventions are distinct for the reasons given above and the search required for Group V is not required for Group VI, restriction for examination purposes as indicated is proper.

Inventions V and VII are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention VII has separate utility such as filling and sealing a soda bottle. See MPEP § 806.05(d).

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Because these inventions are distinct for the reasons given above and the search required for Group V is not required for Group VII, restriction for examination purposes as indicated is proper.

Inventions V and VIII are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention VIII has separate utility such as filling and sealing a soda bottle. See MPEP § 806.05(d).

Because these inventions are distinct for the reasons given above and the search required for Group V is not required for Group VIII, restriction for examination purposes as indicated is proper.

Inventions VI and VII are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention VII has separate utility such as filling and sealing a soda bottle. See MPEP § 806.05(d).

Because these inventions are distinct for the reasons given above and the search required for Group VI is not required for Group VII, restriction for examination purposes as indicated is proper.

Inventions VI and VIII are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention VIII has separate utility such as filling and sealing a soda bottle. See MPEP § 806.05(d).

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Because these inventions are distinct for the reasons given above and the search required for Group VI is not required for Group VIII, restriction for examination purposes as indicated is proper.

Inventions VII and VIII are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention VIII has separate utility such as filling and sealing a soda bottle. See MPEP § 806.05(d).

Because these inventions are distinct for the reasons given above and the search required for Group VII is not required for Group VIII, restriction for examination purposes as indicated is proper.

Upon election of Invention VII, Applicant is required to elect between the following patentably distinct species of the claimed invention:

Species A      Fig. 13: hand-operated apparatus

Species B      Fig. 15: battery-operated apparatus

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently for Invention VII (claims 27-33), no claims appear generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable

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thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

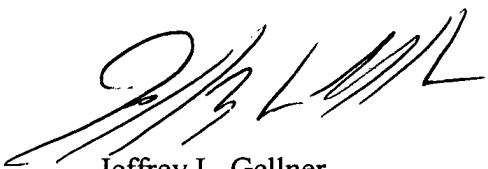
***Conclusion***

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Jeffrey L. Gellner whose phone number is 703.305.0053. The Examiner can normally be reached Monday through Thursday from 8:30 am to 4:00 pm. The Examiner can also be reached on alternate Fridays.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's Supervisor, Peter Poon, can be reached at 703.308.2574. The official fax telephone number for the Technology Center where this application or proceeding is assigned is 703.872.9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703.308.1113.



Jeffrey L. Gellner  
Primary Examiner